

Paul B. La Scala (SBN: 186939)
plascala@shb.com
Darth K. Vaughn (SBN: 253276)
dkvaughn@shb.com
SHOOK, HARDY & BACON L.L.P.
Jamboree Center
5 Park Plaza, Suite 1600
Irvine, California 92614-2546
Telephone: 949-475-1500
Facsimile: 949-475-0016

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL MONTGOMERY ,
Plaintiff,
vs.
WAL-MART STORES, INC.;
KINDERHOOK INDUSTRIES II, L.P.;
KINDERHOOK INDUSTRIES, L.L.C.;
KINERHOOK CAPITAL FUND II,
L.P.; CRESTWOOD HOLDINGS, INC.;
BERGAN, L.L.C.; JOHN ELMBURG;
ROBERT ELMBURG; ERIC
ELMBURG; ROCKY FLICK; HOME
DEPOT U.S.A., INC.; and Does 1
through 20, inclusive ,
Defendants.)
Case No. 12-CV-3057-1-WVG
Hon. M. James Lorenz
Courtroom 5B
**JOINT MOTION EXTENDING
DEFENDANT WAL-MART STORES,
INC.'S TIME IN WHICH TO
RESPOND TO COMPLAINT**
[DEMAND FOR JURY TRIAL]
([Proposed] Order Submitted
Concurrently Herewith)
Complaint Filed: December 24, 2012
Response Due: February 25, 2013
New Response Date: March 27, 2013

Pursuant to Local Rules 7.2 and 12.1 of the Civil Local Rules, Plaintiff Michael Montgomery and Defendant Wal-Mart Stores, Inc. (“Wal-Mart”), by and through their respective attorneys, submit this Joint Motion for Extension of Time for Defendant Wal-Mart Stores, Inc. to Respond to the Complaint. Plaintiff served Wal-Mart in this action on February 4, 2013. Pursuant to the Federal Rule of Civil Procedure 12(a)(1), Wal-Mart’s responsive pleading was due on or before February 25, 2013. Pursuant to

1 a stipulation between plaintiff and Wal-Mart, **Wal-Mart's responsive pleading is**
2 **now due on or before Wednesday, March 27, 2013.**

3 Good cause exists to grant this Joint Motion for the reasons set forth below:

- 4
- 5 • This is the parties' first request for an extension of time to file a
6 responsive pleading.
 - 7 • The extension is necessary to allow Wal-Mart additional time to
8 investigate the facts alleged in the Complaint and prepare its
9 response to the Complaint.
 - 10 • Wal-Mart's local counsel, Darth K. Vaughn, just returned from
11 trial in Houston, Texas, and is not currently admitted to appear
12 before the Southern District, but will be applying forthwith.
 - 13 • The requested extension does not affect any existing case
14 management dates or deadlines. The parties will not be prejudiced
15 if the Court issues an order granting the requested extension.
 - 16 • This Joint Motion is made in good faith and not for purposes of
17 delay.
 - 18 • Both plaintiff and Wal-Mart have agreed to this extension.

19 The undersigned have discussed the terms of this Joint Motion, and they are in
20 agreement with the terms contained herein. The parties respectfully request that the
21 Court grant this extension and issue an order extending Wal-Mart's deadline to file a
22 responsive pleading to March 27, 2013. A [Proposed] Order is submitted herewith for
23 the Court's review.

24 A request for jury trial of this matter is requested.

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ECF CERTIFICATION

Pursuant to section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures of the United States District Court for the Southern District of California, I, Paul B. La Scala, certify that the content of this document is acceptable to the undersigned counsel of record to affix his or her electronic signature hereto.

Dated: February 19, 2013

SHOOK HARDY & BACON L.L.P.

By: /S/ PAUL B. LA SCALA

Paul B. La Scala

Attorneys for Defendant Wal-Mart
Stores, Inc.

Dated: February , 2013

FERGUSON CASE ORR PATERSON L.L.P.

By: /S/ DAVID L. SHAIN

David L. Shain

Attorneys for Plaintiff Michael
Montgomery

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 5 Park Plaza, Suite 1600, Irvine, California 92614.

On February 19, 2013 I served on the interested parties in said action the within:

JOINT MOTION EXTENDING DEFENDANT WAL-MART STORES, INC.'S TIME IN WHICH TO RESPOND TO COMPLAINT

by placing a true copy thereof in a sealed envelope(s) addressed as stated on the attached mailing list.

- (MAIL) I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.
 - (E-MAIL) I caused such document(s) to be served via email on the interested parties at their e-mail addresses listed.
 - (FAX) I caused such document(s) to be served via facsimile on the interested parties at their facsimile numbers listed above. The facsimile numbers used complied with California Rules of Court, Rule 2003, and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2006(d), I caused the machine to print a report of the transmission, a copy of which is attached to the original of this declaration.
 - (HAND DELIVERY) By placing a true and correct copy of the above document(s) in a sealed envelope addressed as indicated above and causing such envelope(s) to be delivered by hand to the addressee(s) designated.
 - (ELECTRONIC FILING) I provided the document(s) listed above electronically through the CM/ECF system pursuant to the instructions set forth in the Local Rules for the United States District Court for the Southern District of California.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on February 19, 2013, at Irvine, California.

Paul B. La Scala
(Type or print name)

/S/ PAUL B. LA SCALA
(Signature)

SERVICE LIST

David L. Shain
FERGUSON CASE ORR PATERSON L.L.P.
1050 South Kimball Road
Ventura, CA 93004

Tel: 805-659-6800
Fax: 805-659-6818
Email: dshain@fcoplaw.com
Attorneys for Plaintiff

Attorneys for Plaintiff